IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6945 of 1999

with

SPECIAL CIVIL APPLICATION No 5658 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

PARDI MUNICIPAL BOROUGH

Versus

VALSAD JILLA KAMDAR SANGH

---

Appearance:

1. Special Civil Application No. 6945 of 1999

MR VM TRIVEDI for Petitioner No. 1

MR AK CLERK for Respondent No. 1

NOTICE SERVED for Respondent No. 1

Mr.Desai, Assistant GOVERNMENT PLEADER, for Respondent No. 2

MR RAJESH K SHAH for Respondents No. 3-20

---

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/09/2001

ORAL JUDGEMENT

1. Valsad District Employees' Union, the respondent No.1 in Special Civil Application No.6945 of 1999, raised an Industrial Dispute for the purpose of giving of permanency to those workmen who have completed 240 days or more in the Service. It is also their demand that the Institution should give benefit under the Gujarat Civil Services (Pay Fixation) Rules, 1980 and benefits of IVth Pay Commission should be made available to the employees, including the benefit of dearness allowance.

2. Another demand of the Union was to give benefit of permanency to those employees who have been regularly recruited and they should be given the said benefit at par with those who have been recruited in illegal manner. Yet another demand was regarding continuance of the benefits which have been given to the employees in the past.

3. The dispute was referred to the Labour Court, Valsad and it was numbered as Reference (LCVD) No.14 of 1995. The Labour Court, Valsad, by its Award dated 22.4.1999, allowed the Reference partly and it was directed that the institution should give benefit of permanency to the employees, on whose behalf the Reference was made and such benefit of permanency should be given from 15.11.1995. Regarding demand No.2, it was ordered that the institution should give the benefits of the IVth Pay Commission to the concerned workmen with effect from 1.1.1999. So far as the rest of the demands were concerned, the Reference was rejected. Accordingly, the Labour Court allowed the said Reference partly.

4. So far as Special Civil Application No.6945 of 1999 is concerned, the same is filed by the Pardi Municipal Borough challenging the said Award dated 22.4.1999, passed by the Labour Court, Valsad, in Reference (LCVD) No.14 of 1995.

So far as Special Civil Application No.5658 of 2001 is concerned, the same is filed by the petitioner-Union in so far as the benefits of IVth Pay Commission recommendations are made effective from 1.1.1999 and not prior to that. It is prayed by the concerned workmen, through the Union, in that petition that the benefit should be given from the date from which other employees were granted the same benefit.

5. It is the say of the petitioner of Special Civil

Application No.5658 of 2001 that the Labour Court has committed an error in granting the said benefit from 1.1.1999 and the said benefit should have been given from 1.4.1995, or, in any case, from 15.11.1995, i.e. from the date of Reference.

6. I have heard all the Advocates in detail. So far as the benefits of IVth Pay Commission which are given by the Labour Court are concerned, it cannot be said that the Labour Court has committed any error of law in any manner. It is required to be noted that even on the basis of justice, equity and good conscience, the said benefits of IVth Pay Commission should be made available to the present set of employees, especially when the other employees who are serving in the Pardi Municipal Borough are getting the said benefit. It is not in dispute that the Municipality has given these benefits to the other 66 employees, who are yet not given the status of permanency. There is, therefore, no reason to discriminate the present petitioners from getting such benefit. As per the say of Mr.Trivedi, the said benefits have been given in view of the order of the State Government of 1975.

Mr.Trivedi has also stated that the Municipality is badly in need of the services of these employees as they are discharging essential services and since long, they are making requisitions to the Director of Municipalities to sanction these posts, as according to Mr.Trivedi, it is impossible for the Municipality to continue the essential activity unless these employees' services are taken by the Municipality. Since it is not in dispute that the 66 employees who are not given the status of permanency are still being paid the benefit of regular scale as well as benefit of IVth Pay Commission Recommendations, there is no reason to deny these benefits to the petitioners of Special Civil Application No.5658 of 2001 and it is just and proper and in the interest of justice and in any case, in view of the judgment of the Division Bench in Kalol Municipality and another v. Shantabehn Kalidas & Others, 1993(2) GLH 255, if the Labour Court has ultimately found that the employees are required to be given the status of permanency by the Municipality or the Local Body, such decision is not dependent upon the sanction of the State Government. On all these grounds, therefore, I do not find any substance in the petition filed by the Municipality and the same is accordingly dismissed. Rule is discharged. Interim relief, if any, shall stand vacated with no order as to costs.

So far as Special Civil Application No.5658 of 2001 is concerned, it is no doubt true that the Labour Court has not given very cogent reasons. However, looking to the financial position of the Municipality and considering the financial difficulty of the Municipality, and since long, requisition was given to the Director of Municipalities, and looking to the totality of the circumstances, I do not find any reason to interfere with the Award of the Labour Court. Since the Municipality has given the benefit to other 66 employees, and in order to avoid heartburning, the Municipality is directed to comply with the order of the Labour Court as early as possible and in any case, latest by 3rd November, 2001.

Since the State was not a party before the Labour Court, Mr.Desai, learned AGP, is right in submitting that in a petition which is filed under Article 227 of the Constitution of India, State was not required to be joined as a party. However, since I am disposing of the main matter finally, it is not necessary to examine that question further whether the State Government is necessary in this Special Civil Application or not. However, in order to see that this problem is put to an end, it is expected that the State Government will also take a pragmatic view of the matter. It is clarified that this judgment is confined to the Award of the Labour Court and not beyond that.

It is also required to be clarified that those employees who are already getting benefit of IVth Pay Commission Recommendations, are also given the benefit of the Vth Pay Commission Recommendations. Mr.Trivedi fairly submitted that in view of the State Government's directions, those employees who are getting the benefit of IVth Pay Commission Recommendations are straight away given the said benefit of Vth Pay Commission recommendations. In view of the aforesaid statement of Mr.Trivedi, in my view, same benefit also should be made available to the persons, on whose behalf the Reference was made before the Labour Court, and, therefore, the Municipality will also carry out this Award with all other consequential benefits, which will also include the benefit of the Vth Pay Commission recommendations. Mr.Desai further argued that since the State was not a party before the Labour Court, this Court should not pass any order. However, on the basis of the Award of the Labour Court, this petition is disposed of and I am not adjudicating any dispute between the Municipality and the State Government. However, it will be open for the Municipality to make appropriate representation to the State Government for the purpose of sanctioning the posts

as well as regarding the benefit of any financial help or grant from the State Government for the purpose of paying the salaries of the employees. It is clarified that the Municipality is directed to comply with the Award of the Labour Court as well as directions given by this Court in these petitions, as stated earlier. It is clarified that this judgment is confined only to the Award of the Labour Court, and, as such, no specific direction is given to the State Government in any manner.

The order of the Labour Court is accordingly confirmed and both these petitions are accordingly disposed of. Rule is discharged with no order as to costs.

Direct service is permitted.

( P.B. Majmudar, J. )

****

(apj)